

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JAMES E. MCROY

FILED

V.

JUN 23 2008 am  
6-23-2008

CASE NO. 08C2741

MICHAEL F. SHEAHAN, ET AL.

MICHAEL W. DODDING  
CLERK, U.S. DISTRICT COURT

JUDGE CASTILLO

MOTION TO ALTER JUDGMENT  
AND/OR RELIEF FROM ORDER

NOW COMES PLAINTIFF, JAMES E. MCROY, PRO SE, MOVES THIS HONORABLE COURT PURSUANT TO FED. R. CIV. P. RULE 59(C), TO ALTER THE JUDGMENT AND/OR PURSUANT TO RULE 60(A)(B), FOR RELIEF FROM ORDER, AND IN SUPPORT THEREOF PLAINTIFF STATES THE FOLLOWING:

1. ON JUNE 6, 2006, PLAINTIFF<sup>FILED</sup> A TIMELY PRO SE COMPLAINT UNDER MCROY V. SHEAHAN, CASE NO. 06C3033, (MCROY I).

2. HOWEVER, PLAINTIFF'S PRO SE COMPLAINT ASSERTED A NUMBER OF CLAIMS AND IMPERMISSIBLY ASSERTED UNRELATED CLAIMS AGAINST DIFFERENT DEFENDANTS.

3. THE COURT HAS TWICE APPOINTED COUNSEL AND HAS ALLOWED BOTH COUNSELS TO WITHDRAW.

4. ON JUNE 10, 2008, PLAINTIFF RECEIVED ORDER DATED JUNE 4, 2008, DISMISSING THIS ACTION, PURSUANT TO 28 U.S.C. SECTION 1915 A (B)(1) FOR FAILURE TO STATE A CLAIM.

5. HOWEVER, THIS COMPLAINT(CLAIM)" AROSE OUT OF THE CONDUCT, TRANSACTION OR OCCURRENCE SET OUT AND PLAINTIFF

ATTEMPTED TO SET IT OUT IN HIS ORIGINAL PLEADING." FED. R. CIV. P. 15(C)(1)(A)(B); HENDERSON V. BOLANDA, 253 F.3d 928, 932 (TH Cir. 2001); AND THE COURT HIGHLIGHTED THAT PLAINTIFF HAD ALLEGATIONS IN GRIEVANCES (EVIDENCE) FILED JUNE 7 AND JUNE 8, 2004, THAT AROSE OUT OF BEING FORCED OUT OF CELL. (SEE ORDER DATED JUNE 4, 2008).

6. BY PLAINTIFF'S OVERSIGHT ON NEWLY DISCOVERED EVIDENCE WHICH BY DUE DILIGENCE COULD NOT HAVE BEEN DISCOVERED IN TIME TO MOVE, UNDER FED. R. CIV. P., 59(A)(B), AND BY APPOINTED COUNSELS NOT AMENDING PLEADING.

7. BECAUSE OF PLAINTIFF'S OVERSIGHT OR OMISSION OF ATTACK IN ORIGINAL PLEADING, BECAUSE OF THE NUMBER OF CLAIMS FILED, BUT THE PLAINTIFF NOTED FEARS FOR SAFETY STATED IN GRIEVANCES (EVIDENCE) FILED.

8. UNDER FED. R. CIV. P., RULE 60, PERMITS A JUDGMENT OR ORDER TO BE CORRECTED OR VACATED, PROVIDES THAT JUDGMENT, ORDERS, OR OTHER PARTS OF THE RECORD, AND ERRORS ARISING FROM OVERSIGHT OR OMISSION, MAY BE CORRECTED AT ANY TIME.

9. IN PLAINTIFF'S ORIGINAL PLEADING, THE ATTACK AROSE OUT FROM BEING FORCED OUT OF CELL, SHOWS THE INCLUSION LEADING UP TO THE ATTACK IN EVIDENCE (GRIEVANCES) FILED (I.E. SOMEONE GETTING HURT, AND SAFETY), FURTHER HIGHLIGHTED BY NAMED DEFENDANTS OF MICHAEL SHEAHAN AND JOHN DOE SUPERINTENDANT (SUPERINTENDENT PLAXICO), IN ORIGINAL PLEADING, ALSO IN DEFENDANT'S GRIEVANCE RESPONSE DATED JUNE 29, 2004. (SEE MCROY I EXHIBITS (M)(N)(O)).

10. UNDER FED. R. CIV. P. 8, PLAINTIFF IS REQUIRED ONLY THAT HE PROVIDE SHORT PAIN STATEMENTS OF HIS CLAIM, AND A PLAINTIFF

NEED ONLY ALLEGE A VALID CLAIM AND PROVIDE SOME INDICATION OF TIME AND PLACE. THE PLEADING IS NOT MADE INSUFFICIENT BY THE INSUFFICIENCY OF ONE OR MORE ALTERNATIVE STATEMENTS.

II. UNDER FED. R. CIV. P. 15(A), (B), (C), (D); THE PLAINTIFF MAY AMEND PLEADING AT ANY TIME BEFORE PLEADING IS SERVED; THE AMENDMENTS ARE CONFORM TO THE 'EVIDENCE' AND SHALL BE TREATED AS IF THEY HAD BEEN RISED IN THE PLEADING AT ANY TIME, EVEN AFTER JUDGMENT; THE CURRENT COMPLAINT "ARISE OUT" OF THE SAME TRANSACTION OR 'OCCURRENCE' SET FORTH IN THE ORIGINAL COMPLAINT; AND IF THE PLAINTIFF HAS SUPPLEMENTAL PLEADING, THEY MUST SET FORTH TRANSACTION OR OCCURRENCE OR "EVENTS WHICH HAVE HAPPENED SINCE THE DATE OF THE PLEADING" OR IF PLEADING IS DEFECTIVE IN IT'S STATEMENT OF A CLAIM FOR RELIEF THE COURT MAY GRANT PLEADINGS.

WHEREFORE, PLAINTIFF JAMES MCROY, PRAYS THIS HONORABLE COURT GRANTS RELIEF FROM ORDER AND/OR ALTER JUDGMENT; ISSUE A MANDATE REINSTATING COMPLAINT AND NOT CHARGE PLAINTIFF WITH A STRIKE, PURSUANT TO 28 U.S.C. SECTION 1915(G), OR PLRA.

RESPECTFULLY SUBMITTED,  
James Z. McRoy  
PRO SE

### AFFIDAVIT

I, JAMES E. MCROY, SWER UNDER PENALTY OF PERJURY THAT THE FACTS STATED ARE WITH DUE DILIGENCE, AND THE ABOVE ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

EXECUTED ON JUNE 16, 2008.

James Z. McRoy  
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